



**STATE OF NEW JERSEY**

In the Matter of Paul R.	:	
Kleinschmidt, Biologist, Mosquito	:	<b>FINAL ADMINISTRATIVE ACTION</b>
Extermination (C0831S),	:	<b>OF THE</b>
Cape May County	:	<b>CIVIL SERVICE COMMISSION</b>
	:	
	:	
CSC Docket No. 2018-3526	:	
	:	
	:	List Removal Appeal
	:	
	:	

**ISSUED:    OCTOBER 5, 2018    (JET)**

Paul R. Kleinschmidt appeals the removal of his name from the Biologist, Mosquito Extermination (C0831S), Cape May County, eligible list on the basis of an unsatisfactory employment record.

The appellant, a disabled veteran, took the open competitive examination for Biologist, Mosquito Extermination (C0831S), Cape May County, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on February 18, 2016 (OL160174). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory employment record. Specifically, the appointing authority asserted that the appellant was suspended for 45 working days in 2008 from his previous position as an Environmental Health Specialist in Cape May County.<sup>1</sup> It is noted that the appellant resigned in good standing from that position effective July 30, 2010.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that he does not have an unsatisfactory employment record. Additionally, the appellant contends that he resigned in good standing from Cape May County. Moreover, he also argues that he was restored to a separate list

<sup>1</sup> There is no record that the appellant appealed the 45 working day suspension to this agency. Rather, he entered into a settlement agreement with the appointing authority where he accepted the suspension.

by a prior decision issued by this agency.<sup>2</sup> However, he does not provide a copy of such information in support of his claims.<sup>3</sup>

In response, the appointing authority submits documentation it relied on in removing the appellant from the list.

## CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error. Further, *N.J.A.C.* 4A:4-4.7(a)11 allows the removal of an eligible's name from an eligible list for other valid reasons.

In this matter, the appointing authority maintains that the appellant has an unsatisfactory employment record as he received a 45 working day suspension in 2008 while employed in that jurisdiction. The appellant argues that he resigned in good standing from Cape May County and he does not possess an unsatisfactory employment record. A review of the record reflects that the appellant received a 45 working day suspension in 2008 while employed in his position in Cape May County. As such, the appellant's disciplinary record confirms a major disciplinary incident. Although the suspension is remote in time, a major disciplinary incident is sufficient for the appointing authority in this matter to remove the appellant from the list. Although the appellant resigned in good standing, such information does not overcome that his disciplinary record with the same appointing authority reflects a 45 working day suspension. Moreover, the appellant does not provide any substantive information or evidence to refute his employment record, nor did he provide any explanations pertaining to his involvement in the incident. With respect to the appellant's argument that this agency issued a prior decision that

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<sup>2</sup> The appellant has appeared on numerous lists. In his submissions, he attaches an appeal to the Civil Service Commission's Division of Agency Services' Certification Unit for Code Enforcement Officer. The reason for his removal from that list was a failure to reply to the certification notice. Agency records indicate that appeal was denied by Agency Services on April 15, 2015. It is also noted that the appellant was removed from the eligible list for Registered Environmental Health Specialist, Public Health (C07745), Cape May County. His appeal of that removal was denied by Agency Services on December 11, 2015. The reason for the appellant's removal from that list was the aforementioned 45 working day suspension.

<sup>3</sup> Official records show no matters decided by the Commission restoring the appellant to any previous list. It is possible that the appellant is referring to a restoration to a previous list made by the Division of Agency Services. Prior to 2017, list removal appeals were initially decided by the Division of Agency Services. Individuals or appointing authorities dissatisfied with that initial determination could then appeal directly to the Commission. Since 2017, the Commission directly reviews all such appeals.

restored him to a separate list, the appellant does not provide any evidence in support of that claim. Regardless, each matter is evaluated on its own merits and, considering the factors present in this matter, the appellant's removal from the list based on an unsatisfactory employment record from the same appointing authority is warranted. As such, the appellant has not met his burden of proof in this matter.

Accordingly, there is sufficient evidence to remove the appellant's name from the Biologist, Mosquito Extermination (C0831S), Cape May County, eligible list.

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>rd</sup> DAY OF OCTOBER, 2018



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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c: Paul R. Kleinschmidt  
Elizabeth Bozzelli  
Kelly Glenn